

98-369, div. B, title VII, §2732(b)(2), July 18, 1984, 98 Stat. 1199.)

AMENDMENTS

1984—Par. (1). Pub. L. 98-369 substituted “increase the use of full and open competition in the procurement of property or services by the executive agency by establishing policies, procedures, and practices that assure that the executive agency receives a sufficient number of sealed bids or competitive proposals from responsible sources to fulfill the Government’s requirements (including performance and delivery schedules) at the lowest reasonable cost considering the nature of the property or service procured;” for “increase the use of effective competition in procurement by the executive agency;”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 252c, 253, 418, 421 of this title; title 10 sections 133, 2302c, 2304, 2435; title 15 section 637; title 49 section 40110.

§ 414a. Personnel evaluation

The head of each executive agency that is subject to the provisions of title III of the Federal Property and Administrative Services Act of 1949 [41 U.S.C. 251 et seq.] shall ensure, with respect to the employees of that agency whose primary duties and responsibilities pertain to the award of contracts subject to the provisions of this Act, that the performance appraisal system applicable to such employees affords appropriate recognition to, among other factors, efforts—

- (1) to increase competition and achieve cost savings through the elimination of procedures that unnecessarily inhibit full and open competition;
- (2) to further the purposes of the Small Business and Federal Procurement Competition Enhancement Act of 1984 and the Defense Procurement Reform Act of 1984; and
- (3) to further such other objectives and purposes of the Federal acquisition system as may be authorized by law.

(Pub. L. 98-577, title V, §502, Oct. 30, 1984, 98 Stat. 3085.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, as amended, referred to in provision preceding par. (1), is act June 30, 1949, ch. 288, 63 Stat. 393, as amended. Title III of the Federal Property and Administrative Services Act of 1949 is classified generally to subchapter IV (§251 et seq.) of chapter 4 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40, Public Buildings, Property, and Works, and Tables.

This Act and the Small Business and Federal Procurement Competition Enhancement Act of 1984, referred to in provision preceding par. (1) and par. (2), is Pub. L. 98-577, Oct. 30, 1984, 98 Stat. 3066. For complete classification of this Act to the Code, see Short Title note set out under section 251 of this title and Tables.

The Defense Procurement Reform Act of 1984, referred to in par. (2), is Pub. L. 98-525, title XII, Oct. 19, 1984, 98 Stat. 2588. For complete classification of this Act to the Code, see Short Title of 1984 Amendment note set out under section 2302 of Title 10, Armed Forces, and Tables.

CODIFICATION

Section was enacted as part of the Small Business and Federal Procurement Competition Enhancement Act of 1984, and not as part of the Office of Federal Procurement Policy Act which comprises this chapter.

§ 415. Repealed. Pub. L. 103-355, title VI, § 6003, Oct. 13, 1994, 108 Stat. 3364

Section, Pub. L. 93-400, §17, as added Pub. L. 98-191, §7, Dec. 1, 1983, 97 Stat. 1330, directed Administrator to conduct studies and issue report by Apr. 1, 1984, to Congressional committees on extent of competition in award of subcontracts by Federal prime contractors.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 10001 of Pub. L. 103-355, set out as an Effective Date of 1994 Amendment note under section 251 of this title.

§ 416. Procurement notice

(a) Covered executive agency activities; publication of notice; time limitations

(1) Except as provided in subsection (c) of this section—

(A) an executive agency intending to—

- (i) solicit bids or proposals for a contract for property or services for a price expected to exceed \$25,000; or
- (ii) place an order, expected to exceed \$25,000, under a basic agreement, basic ordering agreement, or similar arrangement,

shall furnish for publication by the Secretary of Commerce a notice of solicitation described in subsection (b) of this section;

(B) an executive agency intending to solicit bids or proposals for a contract for property or services for a price expected to exceed \$10,000, but not to exceed \$25,000, shall post, for a period of not less than ten days, in a public place at the contracting office issuing the solicitation a notice of solicitation described in subsection (b) of this section; and

(C) an executive agency awarding a contract for property or services for a price exceeding \$25,000, or placing an order referred to in clause (A)(ii) exceeding \$25,000, shall furnish for publication by the Secretary of Commerce a notice announcing the award or order if there is likely to be any subcontract under such contract or order.

(2) The Secretary of Commerce shall publish promptly in the Commerce Business Daily each notice required by paragraph (1).

(3) Whenever an executive agency is required by paragraph (1)(A) to furnish a notice to the Secretary of Commerce, such executive agency may not—

(A) issue the solicitation earlier than 15 days after the date on which the notice is published by the Secretary of Commerce; or

(B) in the case of a contract or order expected to be greater than the simplified acquisition threshold, establish a deadline for the submission of all bids or proposals in response to the notice required by paragraph (1)(A) that—

- (i) in the case of an order under a basic agreement, basic ordering agreement, or similar arrangement, is earlier than the date 30 days after the date the notice required by paragraph (1)(A)(ii) is published;
- (ii) in the case of a solicitation for research and development, is earlier than the date 45 days after the date the notice required by paragraph (1)(A)(i) is published; or

(iii) in any other case, is earlier than the date 30 days after the date the solicitation is issued.

(4) An executive agency intending to solicit offers for a contract for which a notice of solicitation is required to be posted under paragraph (1)(B) shall ensure that contracting officers consider each responsive offer timely received from an offeror.

(5) An executive agency shall establish a deadline for the submission of all bids or proposals in response to a solicitation with respect to which no such deadline is provided by statute. Each deadline for the submission of offers shall afford potential offerors a reasonable opportunity to respond.

(6) The Administrator shall prescribe regulations defining limited circumstances in which flexible deadlines can be used under paragraph (3) for the issuance of solicitations and the submission of bids or proposals for the procurement of commercial items.

(b) Contents of notice

Each notice of solicitation required by subparagraph (A) or (B) of subsection (a)(1) shall include—

(1) an accurate description of the property or services to be contracted for, which description (A) shall not be unnecessarily restrictive of competition, and (B) shall include, as appropriate, the agency nomenclature, National Stock Number or other part number, and a brief description of the item's form, fit, or function, physical dimensions, predominant material of manufacture, or similar information that will assist a prospective contractor to make an informed business judgment as to whether a copy of the solicitation should be requested;

(2) provisions that—

(A) state whether the technical data required to respond to the solicitation will not be furnished as part of such solicitation, and identify the source in the Government, if any, from which the technical data may be obtained; and

(B) state whether an offeror, its product, or service must meet a qualification requirement in order to be eligible for award, and, if so, identify the office from which the qualification requirement may be obtained;

(3) the name, business address, and telephone number of the contracting officer;

(4) a statement that all responsible sources may submit a bid, proposal, or quotation (as appropriate) which shall be considered by the agency;

(5) in the case of a procurement using procedures other than competitive procedures, a statement of the reason justifying the use of such procedures and the identity of the intended source; and

(6) in the case of a contract in an amount estimated to be greater than \$25,000 but not greater than the simplified acquisition threshold, or a contract for the procurement of commercial items using special simplified procedures—

(A) a description of the procedures to be used in awarding the contract; and

(B) a statement specifying the periods for prospective offerors and the contracting officer to take the necessary preaward and award actions.

(c) Exempted, etc., activities of executive agency

(1) A notice is not required under subsection (a)(1) of this section if—

(A) the proposed procurement is for an amount not greater than the simplified acquisition threshold and is to be conducted by—

(i) using widespread electronic public notice of the solicitation in a form that allows convenient and universal user access through a single, Government-wide point of entry; and

(ii) permitting the public to respond to the solicitation electronically;

(B) the notice would disclose the executive agency's needs and the disclosure of such needs would compromise the national security;

(C) the proposed procurement would result from acceptance of—

(i) any unsolicited proposal that demonstrates a unique and innovative research concept and the publication of any notice of such unsolicited research proposal would disclose the originality of thought or innovativeness of the proposal or would disclose proprietary information associated with the proposal; or

(ii) a proposal submitted under section 638 of title 15;

(D) the procurement is made against an order placed under a requirements contract, a task order contract, or a delivery order contract;

(E) the procurement is made for perishable subsistence supplies;

(F) the procurement is for utility services, other than telecommunication services, and only one source is available; or

(G) the procurement is for the services of an expert for use in any litigation or dispute (including any reasonably foreseeable litigation or dispute) involving the Federal Government in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, or in any part of an alternative dispute resolution process, whether or not the expert is expected to testify.

(2) The requirements of subsection (a)(1)(A) of this section do not apply to any procurement under conditions described in paragraph (2), (3), (4), (5), or (7) of section 253(c) of this title or paragraph (2), (3), (4), (5), or (7) of section 2304(c) of title 10.

(3) The requirements of subsection (a)(1)(A) of this section shall not apply in the case of any procurement for which the head of the executive agency makes a determination in writing, after consultation with the Administrator for Federal Procurement Policy and the Administrator of the Small Business Administration, that it is not appropriate or reasonable to publish a notice before issuing a solicitation.

(d) Availability of complete solicitation package; payment of fee

An executive agency shall make available to any business concern, or the authorized rep-

representative of such concern, the complete solicitation package for any on-going procurement announced pursuant to a notice of solicitation under subsection (a) of this section. An executive agency may require the payment of a fee, not exceeding the actual cost of duplication, for a copy of such package.

(Pub. L. 93-400, §18, as added Pub. L. 98-369, div. B, title VII, §2732(a), July 18, 1984, 98 Stat. 1195; amended Pub. L. 98-577, title III, §303(a), Oct. 30, 1984, 98 Stat. 3077; Pub. L. 99-500, §101(c) [title X, §922(b), (d)(2)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-151, 1783-152, and Pub. L. 99-591, §101(c) [title X, §922(b), (d)(2)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-151, 3341-152; Pub. L. 99-661, div. A, title IX, formerly title IV, §922(b), (d)(2), Nov. 14, 1986, 100 Stat. 3931, 3932; renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 101-510, div. A, title VIII, §806(d), Nov. 5, 1990, 104 Stat. 1592; Pub. L. 103-355, title I, §1055(b)(1), title IV, §§4201(b), (c), 4202(a)-(c), title VIII, §8302, title IX, §9001(b), Oct. 13, 1994, 108 Stat. 3265, 3344, 3398, 3402; Pub. L. 104-106, div. D, title XLI, §4101(c), title XLII, §4202(d), title XLIII, §§4310, 4321(h)(3), Feb. 10, 1996, 110 Stat. 642, 654, 670, 675; Pub. L. 105-85, div. A, title VIII, §850(e)(2), Nov. 18, 1997, 111 Stat. 1849; Pub. L. 105-261, div. A, title X, §1069(d)(1), Oct. 17, 1998, 112 Stat. 2136.)

CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

AMENDMENTS

1998—Subsec. (c)(1)(A)(ii). Pub. L. 105-261 substituted a semicolon for period at end.

1997—Subsec. (c)(1). Pub. L. 105-85 added subpar. (A), redesignated subpars. (C) to (H) as (B) to (G), respectively, and struck out former subpars. (A) and (B) which read as follows:

“(A) the proposed procurement is for an amount not greater than the simplified acquisition threshold and is to be made through a system with interim FACNET capability certified pursuant to section 426a(a)(1) of this title or with full FACNET capability certified pursuant to section 426a(a)(2) of this title;

“(B)(i) the proposed procurement is for an amount not greater than \$250,000 and is to be made through a system with full FACNET capability certified pursuant to section 426a(a)(2) of this title; and

“(ii) a certification has been made pursuant to section 426a(b) of this title that Government-wide FACNET capability has been implemented;”.

1996—Subsec. (a)(1)(B). Pub. L. 104-106, §4101(c)(B), inserted “for a price expected to exceed \$10,000, but not to exceed \$25,000,” after “property or services”.

Pub. L. 104-106, §4101(c)(A), substituted “subsection (b) of this section; and” for “subsection (f) of this section—” and struck out cls. (i) and (ii) which read as follows:

“(i) in the case of an executive agency other than the Department of Defense, if the contract is for a price expected to exceed \$10,000, but not to exceed \$25,000; and

“(ii) in the case of the Department of Defense, if the contract is for a price expected to exceed \$5,000, but not to exceed \$25,000; and”.

Subsec. (a)(6). Pub. L. 104-106, §4202(d)(1)(A), inserted “issuance of solicitations and the” after “paragraph (3) for the”.

Subsec. (b)(5). Pub. L. 104-106, §4321(h)(3), inserted “and” after “source;”.

Subsec. (b)(6). Pub. L. 104-106, §4202(d)(1)(B), substituted “threshold, or a contract for the procurement of commercial items using special simplified procedures—” for “threshold—”.

Subsec. (c)(1)(E). Pub. L. 104-106, §4310, inserted “, a task order contract, or a delivery order contract” after “requirements contract”.

1994—Subsec. (a)(1). Pub. L. 103-355, §4202(a)(1), substituted “\$25,000” for “the small purchase threshold” wherever appearing.

Subsec. (a)(1)(A). Pub. L. 103-355, §9001(b)(1), substituted “notice of solicitation” for “notice” in concluding provisions.

Subsec. (a)(3)(B). Pub. L. 103-355, §4202(a)(2), inserted “in the case of a contract or order expected to be greater than the simplified acquisition threshold,” before “establish a deadline”.

Subsec. (a)(4), (5). Pub. L. 103-355, §4201(b), (c), added pars. (4) and (5).

Subsec. (a)(6). Pub. L. 103-355, §8302, added par. (6).

Subsec. (b)(6). Pub. L. 103-355, §4202(b), added par. (6).

Subsec. (c)(1)(A) to (E). Pub. L. 103-355, §4202(c), added subpars. (A) and (B) and redesignated former subpars. (A) to (C) as (C) to (E), respectively. Former subpars. (D) and (E) redesignated (F) and (G), respectively.

Subsec. (c)(1)(F). Pub. L. 103-355, §4202(c)(1), redesignated subpar. (D) as (F). Former subpar. (F) redesignated (H).

Pub. L. 103-355, §1055(b)(1), added subpar. (F).

Subsec. (c)(1)(G), (H). Pub. L. 103-355, §4202(c)(1), redesignated subpars. (E) and (F) as (G) and (H), respectively.

Subsec. (d). Pub. L. 103-355, §9001(b)(2), substituted “a notice of solicitation under subsection (a)” for “a notice under subsection (e)” in first sentence.

1990—Subsec. (a)(1)(A). Pub. L. 101-510 substituted “the small purchase threshold; or” for “\$25,000;” in cl. (i), substituted “the small purchase threshold” for “\$25,000” and a comma for “; or” in cl. (ii), and struck out cl. (iii) which read as follows: “solicit bids or proposals for a contract for property or services for a price expected to exceed \$10,000, if there is not a reasonable expectation that at least two offers will be received from responsive and responsible offerors.”.

Subsec. (a)(1)(B), (C). Pub. L. 101-510, §806(d)(1), substituted “the small purchase threshold” for “\$25,000” wherever appearing.

1986—Subsec. (a)(1)(A). Pub. L. 99-500 and Pub. L. 99-591, §101(c) [title X, §922(b)(1)], and Pub. L. 99-661, §922(b)(1), amended subpar. (A) identically, substituting “\$25,000” for “\$10,000” in cls. (i) and (ii) and adding cl. (iii).

Subsec. (a)(1)(B), (C). Pub. L. 99-500 and Pub. L. 99-591, §101(c) [title X, §922(b)(2), (3)], and Pub. L. 99-661, §922(b)(2), (3), amended par. (1) identically, adding subpar. (B) and redesignating former subpar. (B) as (C).

Subsec. (b). Pub. L. 99-500 and Pub. L. 99-591, §101(c) [title X, §922(d)(2)], and Pub. L. 99-661, §922(d)(2), amended subsec. (b) identically, substituting “subparagraph (A) or (B) of subsection (a)(1)” for “subsection (a)(1)(A)”.

1984—Subsec. (a)(1)(A). Pub. L. 98-577 designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (a)(1)(B). Pub. L. 98-577 inserted “, or placing an order referred to in clause (A)(ii) exceeding \$25,000,” before “shall furnish”.

Subsec. (a)(3)(B). Pub. L. 98-577 designated existing provisions as cl. (i), substituted provisions relating to an order under a basic agreement for former provisions which related to all bids, and added cls. (ii) and (iii).

Subsec. (b)(1). Pub. L. 98-577 designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (b)(2). Pub. L. 98-577 added par. (2). Former par. (2), which related to information about the officer or employee of the executive agency who may be contacted for purposes of obtaining a copy of the solicitation, was struck out.

Subsec. (c)(1)(B). Pub. L. 98-577 designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (c)(1)(E). Pub. L. 98-577 added subpar. (E).

Subsec. (d). Pub. L. 98-577 added subsec. (d).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-85 effective 180 days after Nov. 18, 1997, see section 850(g) of Pub. L. 105-85, set out as a note under section 2302c of Title 10, Armed Forces.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104-106, see section 4401 of Pub. L. 104-106, set out as a note under section 251 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 251 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 303(b) of Pub. L. 98-577 provided that: “The amendment made by subsection (a) [amending this section] shall take effect with respect to any solicitation issued after March 31, 1985.”

EFFECTIVE DATE

Section applicable to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 251 of this title.

IMPLEMENTATION OF AMENDMENT BY PUB. L. 105-85

Amendment by Pub. L. 105-85 to be implemented in a manner consistent with any applicable international agreements, see section 850(e)(3) of Pub. L. 105-85, set out as a note under section 637 of Title 15, Commerce and Trade.

APPLICABILITY TO TENNESSEE VALLEY AUTHORITY

Section 303(c) of Pub. L. 98-577 provided that: “The provisions of the amendments made by subsection (a) of this section [amending this section] shall apply to the Tennessee Valley Authority only with respect to procurements to be paid from appropriated funds.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 253, 253i, 253j, 427 of this title; title 10 sections 2304, 2304b, 2304c; title 20 section 1018a.

§ 417. Record requirements**(a) Establishment and maintenance of computer file by executive agency; time period coverage**

Each executive agency shall establish and maintain for a period of five years a computer file, by fiscal year, containing unclassified records of all procurements greater than the simplified acquisition threshold in such fiscal year.

(b) Contents

The record established under subsection (a) of this section shall include—

- (1) with respect to each procurement carried out using competitive procedures—
 - (A) the date of contract award;
 - (B) information identifying the source to whom the contract was awarded;
 - (C) the property or services obtained by the Government under the procurement; and
 - (D) the total cost of the procurement;
- (2) with respect to each procurement carried out using procedures other than competitive procedures—
 - (A) the information described in clauses (1)(A), (1)(B), (1)(C), and (1)(D);
 - (B) the reason under section 253(c) of this title or section 2304(c) of title 10, as the case may be, for the use of such procedures; and
 - (C) the identity of the organization or activity which conducted the procurement.

(c) Record categories

The information that is included in such record pursuant to subsection (b)(1) of this section and relates to procurements resulting in the submission of a bid or proposal by only one responsible source shall be separately categorized from the information relating to other procurements included in such record. The record of such information shall be designated “noncompetitive procurements using competitive procedures”.

(d) Transmission and data system entry of information

The information included in the record established and maintained under subsection (a) of this section shall be transmitted to the General Services Administration and shall be entered in the Federal Procurement Data System referred to in section 405(d)(4) of this title.

(Pub. L. 93-400, § 19, as added Pub. L. 98-369, div. B, title VII, § 2732(a), July 18, 1984, 98 Stat. 1197; amended Pub. L. 103-355, title IV, § 4403, Oct. 13, 1994, 108 Stat. 3349.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-355 substituted “procurements greater than the simplified acquisition threshold” for “procurements, other than small purchases,”.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 251 of this title.

EFFECTIVE DATE

Section applicable to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 251 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 405, 427 of this title.

§ 417a. Procurement data**(a) Reporting**

Each Federal agency shall report to the Office of Federal Procurement Policy the number of qualified HUBZone small business concerns, the number of small businesses owned and controlled by women, and the number of small business concerns owned and controlled by socially and economically disadvantaged businesses, by gender, that are first time recipients of contracts from such agency. The Office of Federal Procurement Policy shall take such actions as may be appropriate to ascertain for each fiscal year the number of such small businesses that have newly entered the Federal market.

(b) Definitions

For purposes of this section the terms “small business concern owned and controlled by women” and “small business concerns owned and controlled by socially and economically disadvantaged individuals” shall be given the same meaning as those terms are given under section 637(d) of title 15 and section 204 of this Act, and the term “qualified HUBZone small business